

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 12, 2006

CARLOS SERRANO v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2003-A-390 Cheryl Blackburn, Judge

No. M2005-02851-CCA-R3-PC - Filed October 10, 2006

The Petitioner, Carlos Serrano, pled guilty to second degree murder and received a sentence of thirty years as a violent offender. The Petitioner subsequently filed a petition for post-conviction relief, which the trial court summarily dismissed based upon the Petitioner's failure to amend his petition to contain a factual basis in support of the allegations contained therein. The Petitioner now appeals from that dismissal. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Carlos Serrano, Pro Se.

Paul G. Summers, Attorney General and Reporter; Elizabeth Marney, Assistant District Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The record reflects that, on March 7, 2003, a Davidson County grand jury returned a two-count indictment against the Petitioner charging him with first degree murder and especially aggravated robbery. The Petitioner pled guilty to second degree murder on December 9, 2004, and in accordance with the plea agreement, received a thirty-year sentence as a violent offender. The especially aggravated robbery count was dismissed.

On July 20, 2005, the Petitioner filed a pro se petition for post-conviction relief. The Petitioner did not include any specific facts in support of his post-conviction claims but simply checked the boxes—that the “[c]onviction was based on unlawfully induced guilty plea involuntarily entered without understanding the nature and consequences of the plea,” that the “[c]onviction was based on use of coerced confession,” that the “[c]onviction was based on a violation of the privilege

against self-incrimination,” that the Defendant was denied the effective assistance of counsel, that the conviction was based on “illegal evidence,” and that “other grounds” of relief are present. When asked to give the name and address of the attorney that represented him at the preliminary hearing, the Petitioner stated, “Public Defender Office Amy Harwell stated that Defendant would receive a 20 year sentence at 85%.” When asked to give the name of the attorney for the arraignment and plea, the Petitioner stated, “Counsel for Defendant D. Hopkins submitted a plea of 30 years to the trial court.”

In response to this petition, the trial court entered an order finding that the petition “fails to set forth any allegations as required by the Post-Conviction Procedure Act.” The trial court therefore ordered that the Petitioner had fifteen days to amend his petition to bring it into compliance with the Act. The order further provided that, if the petition was not amended within the fifteen days, “the petition shall be dismissed.” The order was entered on August 2, 2005. The trial court entered this order in both English and Spanish. No further pleadings or orders were filed until October 11, 2005, over sixty days after the trial court’s initial order. At that time, the trial court entered an order dismissing the petition because no amendment to the petition had been filed.

The Petitioner now appeals the trial court’s summary dismissal of his petition. In his brief, the Petitioner notes that his sentence of thirty years “is out of Range” and contends that he “filed a Petition for Post-Conviction Relief on the grounds of ineffective assistance of counsel.” He further argues that (1) “[i]t has been longstanding procedure of Courts within Tennessee to afford a pro se petitioner the opportunity to have counsel assigned to determine the merits of the petitioner’s claims prior to dismissing one’s petition” and (2) “the petitioner is not only a laid-man, [sic] but an alien as well, a person that has no understanding of the law or procedures used” and “whom [sic] speaks very little English”

Post-conviction relief is available only when there has been a violation of a petitioner’s state or federal constitutional rights. See Tenn. Code Ann. § 40-30-103. The pleading asserting the claim(s) for relief “must contain a clear and specific statement of all grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings.” Id. § 40-30-106(d). Where the petition is filed pro se, as in this case, and fails to meet these criteria, the trial court “may enter an order stating that the petitioner must file an amended petition that complies with this section within fifteen (15) days or the petition will be dismissed.” Tenn. Code Ann. § 40-30-106(d).

Tennessee Supreme Court Rule 28 section 5(E) states, in pertinent part, as follows: “Contents of Petition — The petition shall contain: . . . (3) each and every error that petitioner asserts as a ground for relief, including a description of how petitioner was prejudiced by the error(s); (4) specific facts supporting each claim for relief asserted by petitioner; [and] (5) specific facts explaining why each claim for relief was not previously presented in any earlier proceeding” Furthermore, the effect of failure to comply with Rule 28 is that “[a] petition may be dismissed

without a hearing if it . . . does not contain specific factual allegations . . .” Tenn. Sup. Ct. R. 28 § 5(F).

We have carefully reviewed the petition and conclude that the trial court properly determined that the petition did not meet the criteria for further proceedings. The petition contains no factual assertions in any way directed toward or related to the Petitioner’s claims for relief. The petition includes only a one-line allegation of what his attorney told him at the preliminary hearing; the Petitioner provides this allegation in the section requesting the names and addresses of his attorneys. The Petitioner does not suggest how, based on this allegation, he received the ineffective assistance of counsel. The Petitioner also does not state how he was prejudiced by counsel’s representation at the preliminary hearing.

Accordingly, we conclude that the trial court acted within its discretionary authority when it ordered the Petitioner to amend his petition within fifteen days. Furthermore, the trial court entered this order in both English and Spanish to assist the presumably Spanish-speaking Petitioner. Even though the Petitioner was given the opportunity to amend the petition, he nonetheless failed to do so.

The Petitioner cites Billy Wayne Cosby v. State, M2001-01538-CCA-R3-PC, 2003 WL 21486980 (Tenn. Crim. App, Nashville, June 27, 2003), in support of his argument for the appointment of counsel or the amendment of the petition with the aid of counsel. However, unlike in Cosby, the trial court in this case did comply with the procedures set forth in the Post-Conviction Procedure Act. See Cosby, 2003 WL 21486980, at *3. Moreover, “[t]he trial court was not required to appoint counsel for the purpose of providing the factual basis for the petitioner’s claims.” Pewitt v. State, 1 S.W.3d 674, 675-76 (Tenn. Crim. App. 1999). Because the Petitioner failed to amend his petition as ordered, the trial court did not err by dismissing the petition.

The judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE